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Negotiating Demands for Justice: Public Interest Law as a Problem Solving Dialogue

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NEGOTIATING DEMANDS FOR JUSTICE: PUBLIC INTEREST LAW AS A PROBLEM SOLVING DIALOGUE

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ACT 1, SCENE 1: (A first-year law student enters the law professor's office, fuming.)

First-Year Law Student (1L): Hey, Prof, am I right that you're behind the new public interest law course?[1]

Law Professor (P): Well, yes. I, among others, actively lobbied to find a place for it in the law school curriculum and especially supported it as a mandatory course in the first year of legal study.[2]

1L: Excuse me, but where do you get off making this a required course in the first year?![3] In the name of correcting inequitable

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[1] Since 1993, Brigham Young University Law School has required all entering law students to complete the public interest law course during their first year of legal study.

[2] Paul Tremblay, *A Tragic View of Poverty Law Practice*, 1 D.C. L. Rev. 123, 135 (1992) (urging lawyers to refrain from assuming that they know what is in the poor client's best interests, thereby justifying the usurpation of the client's decision-making capability).

[3] Peter Margulies, *"Who Are You to Tell Me That?": Attorney-Client Deliberation Regarding Nonlegal Issues and the Interests of Nonclients*, 68 N.C. L. REV. 213 (1990).

distributions of legal power, you are exploiting your own lopsided power advantage to force me to learn how to *volunteer*?!

P: It does sound a bit paradoxical.

IL: It's more than that; try "contradictory," maybe even "hypocritical." You assuage your guilt over the poor being denied their share of legal services by making our lives miserable.[4] Tell me, Prof, don't we learn in public interest law how to listen carefully to the authentic voice of our disempowered clients?

P: Yes, that is a crucial skill.

IL: But who will teach us how to tell the honest story of disadvantaged people? Surely you can't. How can you presume to teach what you have yet to learn for yourself? Did you ever think of asking my opinion on this? Your paternalism reeks.

P: Whoa, whoa, slow down. My goodness. Are you this upset because the law school unilaterally decides every course in the first-year curriculum, or is your anger directed at just this one course?

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[4] In Howard S. Erlanger and Gabrielle Lessard, *Mobilizing Law Schools in Response to Poverty: A Report on Experiments in Progress*, 43 J. LEGAL EDUC. 199, 202 (1993), the writers note:

> When poverty law courses are required, students often resist innovative teaching techniques and are uncomfortable about being challenged to refine their understanding about the role of law, the workings of society, or the subjects appropriately studied by fledgling lawyers. They express their resistance sometimes through complaints or challenges to instructors . . . .

1L: Just this one. The others are *real* courses. I understand why they are mandatory because they form the foundation of the legal system, as evidenced by the fact that their doctrines are tested by the bar exam in every state. Last I checked, public interest law is not part of the bar exam anywhere.

P: But not all bar exam subjects are mandatory law school courses. The bar exam can't be the standard by which to judge whether a course ought to be required.

1L: Maybe not, but it gives me some way to rationalize all the hours I spend studying the case law and statutes in my other first-year courses. What justification do you have for insisting on public interest law?

P: Well, for starters, it has prompted you to openly question the legitimacy of the law faculty's control over your education.[5]

1L: Ah, c'mon, Prof, don't get carried away. I'm just incensed over this one course.

P: Not so fast. By questioning the imposition of the public interest law course in particular, you are challenging the status-quo of legal education, especially the well-entrenched custom of law teachers deciding what is in your best interest to study. You are questioning the fairness of institutional decision-making practices that

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[5] Gerald P. Lopez, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-generic Legal Education*, 91 W. VA. L. REV. 305 (1988).

routinely exclude you from equitable participation.[6]

1L: I'm not sure I am following you. All that I see at stake is a particular change in my course load.[7]

P: Is that how you characterize it? In so limited a fashion? Your passion makes it plain to me that you didn't come to my office simply to get the law faculty to change its mind in this one instance. It strikes me that you are indignant over the way you are perceived and reckoned with here at the law school -- in short, you seek equal respect.[8]

1L: Hmmm . . . tell me more.

P: Look, didn't you argue earlier that the law faculty should have taken the time to hear you out before imposing the course?[9]

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[6] *See* Tom R. Taylor, *What is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures*, 22 LAW & SOC'Y REV. 103 (1988) (suggesting that people are satisfied with imposed decisions only if they feel that they have been considered in the decision-making process).

[7] Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976).

[8] There is inescapable tension between listening carefully to the speaker's authentic message ("I want to drop public interest law") and contextualizing the protest per the listener's interpretive gloss ("Oh, I see that what you are really trying to say is that you are sick and tired of your subordinate position vis-a-vis the law faculty"). *See* Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298, 1324-25 (1992).

[9] Naomi R. Cahn, *Inconsistent Stories*, 81 GEO. L.J. 2475 (1993). Whose outsider story is taking priority and subordinating others? Those disadvantaged poor wondering when privileged law students will "get a clue" and so cry out for

1L: Yes, exactly.

P: Did you mean that we should have discussed our decision with you individually or consulted with your class as a whole?

1L: The first-year class as a whole. There should have been an open forum, maybe even a vote. That way, we all could have had a say.

P: So your complaint really has to do with transforming the power inherent in institutional practices.

1L: How so?

P: What would really satisfy you most would be structural reform that prevents this from happening again, right? You seek specific relief -- dropping the public interest course -- as well as a new relationship which diminishes the likelihood of prospective harm of a related sort, do you not?[10]

1L: Yes . . . but I would settle for the course being removed from the first-year curriculum even if the law school power relationship remained status quo ante.

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such a course? Law faculty with poverty law experience who, being few in numbers, had to wheel and deal to get the course included? The law students themselves?

[10] In CAROL GILLIGAN'S, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982), Gilligan argues forcefully for understanding conflict not simply as a quest to be adjudged right under the governing rule but to be protected from harm as part of a community. *See* Leslie Bender, *From Gender Difference to Feminist Solidarity: Using Carol Gilligan and an Ethic of Care in Law*, 15 VT. L. REV. 1 (1990).

P: Elimination of a symptom without treating the source?

1L: I suppose.

P: Well, I am hearing you tell two stories at the same time. While they are not in opposition, they create tension.[11]

1L: And they are?

P: First, that it is fundamentally unfair that you would have to take the public interest law during your first year as a mandatory subject.

1L: That's right.

P: But your second story, I take it, is that you would be willing to accept the additional course so long as a faculty-student consultation process convinced you and your classmates that the public interest law course is as real and important as your other first-year courses.[12]

1L: Hmmm. . . . You are making it sound as though I am caught between a selfish, immediate goal and group-based reform.[13]

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[11] Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1103, 1128 (1992).

[12] Cahn, *supra* note 9.

[13] Anthony E. Cook, *Foreword: Toward a Postmodern Ethics of Service*, 81 GEO. L.J. 2457, 2473 (1993):

> As I have suggested, the ethical duty of the postmodern public interest lawyer is one of service to the Other. The ethical duty requires a willingness to meet the oppressed where they are

P: Or, more broadly stated, between an oppressive act and its underlying power relationship.

1L: You're saying that by pursuing my specific grievance, I implicate an institutional practice.

P: Yes, and while not meaning to insult you, I would submit that the reason that you, and most disadvantaged clients, ask for so little is that you cannot imagine yourself asking for more.[14]

1L: Heck, I admit that, given my lowly position around here, I expect to be kept in the dark, uninformed, and excluded from law school decision-making processes.

P: Something tells me that had the law faculty respected your need to know about public interest law ahead of time, you might have grumbled nonetheless, but no more than you do over civil procedure.[15]

> and to empty oneself of Self in preparation for serving the Other. The hope is that in the ethical encounter of Self and Other, given such critical emptying, the stories and experiences of the latter will be given a certain affirmation and credence they normally lack as marginalized narratives within dominant discourse.

[14] Does the poorer person dare allow himself to ponder the real changes that are necessary? Or is the framing of the issue itself a reflection of powerlessness?

[15] Lucie E. White, Goldberg v. Kelly *on the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861, 874 (1990): "In order to ward off frustration, welfare programs may not need to satisfy clients' full 'material' needs, even as clients themselves define them. But those programs must treat poor people with dignity."

1L: How does this discussion bear on public interest law?

P: Framing and processing issues in the public interest can be tricky. On the one hand, we want to honor the genuine concern expressed by the complaining party. On the other, we want to keep in mind the common good. Is it enough to settle the narrow issue at hand? Or does the specific protest implicate larger, structural practices that ought to be transformed in order to protect the public at large?

1L: But doesn't the quality of the dialogue which frames the issue depend in part upon who is present and their relative authority to impose terms on the discourse? Until we had this talk, I understood the issue only one way.

P: You're right. And let's not overlook those who are missing from this dialogue -- your classmates. It would be disingenuous to speak of the public interest without hearing from their hidden voices.

1L: So how do we get their input?[16]

ACT I, SCENE II: (The law professor engages in an aside, entreating the reading audience to understand the method behind the madness.)

Have you placed any marks on this dialogue so far? Have you scratched out any words or rewritten any of the sentences? You were supposed to. You see, it represents an effort to create a collaborative, open-ended syllabus for my public interest law course. Rather than impose my professorial voice as the final word on the semester's topics for class discussion, required texts, assigned readings and so

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[16] Ellmann, *supra* note 11, at 1107.

on, I thought it would be more in keeping with the public interest theme to invite the students to share their ideas, suggestions, and concerns.[17] Since it would have required a prohibitive time commitment to interview all ninety of them individually, I drafted this imaginary dialogue to give them an opportunity to participate in the construction of the course.

Well, I should qualify "imaginary." As I considered various instructional approaches to integrate student voice into the design of the course, a small group of first-year students dropped by my office before the Winter semester began to have a "talk." They were clearly upset.

Each of the students took turns making a case why they and the first-year law class as a whole should be relieved from taking the public interest law course. What became apparent, however, was that as much as they agreed on the overall purpose of their visit, they raised different arguments, one claiming that the course was futile ("you'll never change our basic attitudes"); another asserting that, yes, she would be intrigued by a class examining law in the *public* interest, but she suspected that this course was designed to advocate law for a special interest -- the poor; a third student argued that it was unfair for this "boutique" course to detract from study time needed for "real, bar exam" law school subjects; and so on.

At first I felt defensive, but then it hit me: Why not make constructive use of their indignation? Since they were frustrated by their exclusion from the law school decision-making process, wouldn't they be motivated all the more to participate in the design of the public interest law course syllabus? The more we talked, the more I resolved to extend our dialogue to all ninety students in the

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[17] Some students are bound to react to this learning opportunity with acute anxiety over the lack of clear structure. *See* Toni Pickard, *Experience as Teacher: Discovering the Politics of Law Teaching*, 33 U. TOR. L.J. 279, 292 (1983).

class.

The first section, as you can see, provoked their views on the law school's imposition of the course itself. How many of them would identify with the anger expressed by the first-year law students in my office? What other reasons would they offer? How many were of a different opinion, eager and excited to take the course? What notions of public interest law affected their initial attitude and expectations? Did they agree that, ultimately, public interest law transforms power relationships and institutional practices to allow equitable participation by all affected parties?

I handed out the imaginary dialogue on the first day of class and asked the students to interlineate their reactions in the margins and to comment at length on the backside of the pages. I encouraged them to note their familiarity with the themes presented and to add or change words to capture their sentiments.[18] I then placed the students in small groups and had them exchange papers outside of class to explore the spectrum of opinions. Reconvened as an entire class, we used the marked-up dialogues to formulate a working definition of public interest law and to share our expectations for the course. Finally, with the help of teaching assistants, we negotiated the course syllabus, the alternative field projects, the selection of texts, the format for class discussion, and alternative methods for testing and grading.[19]

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[18] I am always curious at the beginning of the semester about how familiar the students are with the course material. Knowing their respective starting points, where each of them begins the learning journey, enables me to compose diverse teams for group projects and to sustain provocative class discussion.

[19] Jumping ahead of my story a bit, I found the students' feedback so useful that I sustained our dialogue -- and the further massaging of the course syllabus -- by having the students periodically evaluate in writing our understanding of public interest law and our progress as public interest lawyers. Reacting to assigned topics or speakers, the students submitted five short reflective papers which chronicled their further reflections on themes initially presented in the imaginary

Indeed, I wanted the students to understand public interest law as a richly textured narrative taken from real life stories -- beginning with their own. After all, how could they learn to relate to disadvantaged people if they couldn't put into words their own subordination? How could they improve legal problem-solving for the common good unless open exchanges taught them how to synthesize diverse perspectives into the "public" interest? Consequently, I did away with opening lectures.[20] Passive information transfers were similarly out-of-bounds.[21] There was no silencing, no deliberate humiliation or brow-beating of students by the manipulation of legal theory and logic.[22] Ditto for belittling

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dialogue below. *See* PAULO FRIERE, PEDAGOGY OF THE OPPRESSED (1970) (stressing the importance of a dialogic learning process through reflection and action).

[20] I am hardly the first to try this approach. *See* Pickard, *supra* note 17, at 292. When planning group exercises with students, Professor Pickard is determined not to overtly control the course of discussion.

[21] Lopez, *supra* note 5, at 312-14, 334-35.

[22] On a humorous note, see James D. Gordon, III, *How Not to Succeed in Law School*, 100 YALE L.J. 1679, 1684 (1991):

> Remember those horror movies in which somebody wearing a hockey mask terrorizes people at a summer camp and slowly and carefully slashes them all into bloody little pieces? That's what the first year of law school is like. Except that it's worse, because the professors don't wear hockey masks, and you have to look directly at their faces.

From this kind of modeling by the professor, it is no surprise that law graduates "get even" with clients as they assume the professor's role, deliver one-way lectures, and demand deference if not passivity from the layman.

students for the knowledge and understanding they lacked.[23]

Most of all, I transformed the classroom into a hands-on workshop engaged in equally by all students as well as myself.[24] Class discussions and field assignments honored and redeemed the academic and interpersonal talents that made the students attractive candidates for legal study in the first place.[25] I did my best to provide them with the opportunity to experience themselves as a whole community, a unit greater than the sum of its parts.[26]

Was this experiment in positive recognition and self-help participation really necessary?[27] Just listen:

ACT II, SCENE I: (Where the law professor tries to emphasize the

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[23] Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street Level Bureaucracy*, 43 HASTINGS L.J. 947, 951 (1992): "Most lawyers dominate lawyer-client interactions with their expertise in technical matters, their use of mysterious legal language, their depersonalization of disputes, and their greater perceived importance."

[24] Lopez, *supra* note 5, at 316.

[25] As a conscious modeling process, the instructor can choose to demonstrate an ethic of care rather than the ethic of rights. *See* Stephen Ellmann, *The Ethic of Care as an Ethic for Lawyers*, 81 GEO. L.J. 2665, 2668 (1993): "This perspective emphasizes people's mutual connections rather than their solitary autonomy."

[26] James R. Elkins, *Pedagogy of Ethics*, 10 J. LEGAL PROF. 37, 58 (1985): The Socratic Method "teaches students to be silent in the face of the suffering of others" and that "compassion is subordinate to process."

[27] For extensive studies and pioneering work in collaborative learning and development, *see generally*, THE WASHINGTON CENTER, Evergreen State College, Olympia, Washington.

difficulty of hearing and integrating missing voices into problem-solving).

1L: While you were talking to the audience I read over the comments made in reaction to the first section of this dialogue. I can't believe all that I am finding out about my classmates!

P: You sound genuinely surprised.

1L: Look for yourself. We have so much to say.

P: Given your diverse life experiences and tremendous accomplishments, is it any wonder that you and your classmates would have this much to contribute to the quality of legal education?

1L: You're right. It's time that we capitalize on our talents and participate more actively as learning partners.

P: Hold on! As we discussed previously, the existing power relationships and institutional practices here at the law school might not be hospitable to such infusion of self-help resources.

1L: What do you mean?

P: In your *real* courses, as you called them, have you had any say in what would be taught, when and how?

1L: No.

P: Has there been any aspect of the first-year curriculum or pedagogy that is open to you for negotiation?

1L: Not really.

P: Have you ever felt that as a law student your distinct life story was critical to the form or function of the law school learning process?[28]

1L: Are you kidding? I feel like a fungible commodity, without race, gender, age, economic class standing, home, family, history or any other personalizing characteristic.[29] I get the distinct impression that there are hundreds standing in line to replace me and not one of my professors would notice the difference if they did.

P: Defaced? Erased?

1L: Gee, thanks, Prof.

P: I say that not to be cruel but to draw out your connection to the plaintiffs and defendants you read about in your law school casebooks.

1L: I don't get the connection.

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[28] Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807 (1993). To help students understand subordinated or disadvantaged communities, Professors Hing, Gerald Lopez and others at Stanford Law School have created a curriculum which stresses lawyering for social change. It attempts to "open the eyes" of students to differences among themselves and then to gain an understanding and tolerance of those differences.

[29] I asked students to respond to this view by providing as little or as much information on themselves as they cared to.

P: They too have no character, no context. They, like you, are props of legal doctrine.[30]

IL: Now I get it. If I am no more than cardboard, it will not bother me that the real human beings in the cases are reduced to wafer-thin personalities.

P: Exactly. It is all about "prisoner's regression."[31]

IL: What?

P: "Prisoner's regression." It refers to a soul-destroying process, the mental breakdown of an inmate caused by undernourishment, sleep deprivation, exaggerated fears and anxieties, isolation from loved ones, and reduction of personality to a number. Prisoners

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[30] Ann Shalleck, *Construction of the Client within Legal Education*, 45 STAN. L. REV. 1731, 1732, 1734 (1993). Students often do not realize that they are dealing with "cardboard" clients. Law school cases transform them by:

> stripping away their defining characteristics and simultaneously giving them new identities that situate the constructed clients firmly in the existing terminology of legal discourse. . . . By making the court's statement of facts appear unproblematic and authoritative, this routine practice destroys any real opportunity to inquire into clients' particular circumstances or their social world.

Id.

[31] VICTOR FRANKL, MAN'S SEARCH FOR MEANING, 56-57, 72 (1984): "We'd all fancied ourselves to be 'somebodies' but now we're treated like complete nonentities . . . . [W]e've become doubtful . . . tentative . . . unsure. Some deal with it with bravado, others with sullen silence."

regress ultimately to animal behaviors, fighting among themselves for even the tiniest increase in rations.[32]

1L: Gee, are you describing prisoners or law school students?![33]

P: They are both homogenized, captive audiences, doing what they are told, aren't they?[34]

1L: Oh, c'mon, it's hyperbole to liken the mandatory first-year curriculum to involuntary confinement. Even if I agreed with your

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[32] *Id.* at 72.

[33] *1L:* I have followed you into this footnote to reject your characterization. Don't you ever grow weary of sticking words in my mouth?

P: But you don't seem to mind in your other, *real* courses. Don't you see how professors exert a profound influence in shaping classroom discourse? What may appear to you to be a dialogue is simply the professor permitting a few stray words from the students, here and there, to convince himself that he is not "lecturing."

[34] Clark D. Cunningham, *Sometimes You Can't Make a Dent, but They Know You've Been There: The Lawyer as God's Witness*, 106 HARV. L. REV. 1962 (1993) (book review) (quoting WILLIAM STRINGFELLOW, A SIMPLICITY OF FAITH: MY EXPERIENCE IN MOURNING, 128 (1982)). Stringfellow, a 1956 Harvard graduate who actively practiced poverty law, described his peers as taking law school with "literally dead" earnestness. He explained what this means:

> Law students . . . are subjected to indoctrinations, the effort of such being to make the students conform quickly and thoroughly to that prevailing stereotype deemed most beneficial to the profession and to its survival as an institution, its influence in society, and its general prosperity. At the Harvard Law School, this process is heavy, intensive, and unrelenting. . . . The demand for conformity in a profession commonly signifies a threat of death.

basic point, it seems to me that my marginalization is limited to the classroom context.

P: You think so?

1L: Sure. Away from the professor, on our own time, we students decide for ourselves when and how best to study the law. We form study groups, share outlines, and comment on each other's papers. Surely these moments of "self-determination" among disadvantaged first-year law students offset the professor-dominated classroom?

P: To some degree, yes. But even then, your problem-solving development is controlled, if not stunted, by institutional decision-making.

1L: How so?

P: Let's walk through an example. Are the effects of poverty, racism, sexism, homophobia and other forms of subordination evident in the relationships among law school students?

1L: Oh, yes. Some group of students always has its nose out of joint.

P: Why is that?

1L: I'm no expert but it seems that groups take turns being outraged at each other's behavior, labeling it as elitist, bigoted, racist, sexist, *et cetera.*

P: How are those problems handled?

1L: Typically, the alleged victims demand vindication of their rights from the deans and the law faculty.

P: What happens then?

1L: Well, assuming there is some proof of misconduct, the administration punishes the offending parties and makes the obligatory speech of being opposed to bigotry in all its forms.

P: Do you think that the law school's expedient solutions serve your educational and professional need for an inclusive political dialogue among diverse groups?[35]

1L: Not really. I think the powers that be are trying to satisfy their own interest in keeping the peace -- or, I should say, maintaining the absence of open hostility.

P: So misunderstanding and tension are tolerated as long as the immediate problem goes away and the students involved avoid each other?

1L: Sure. A shaky truce imposed from on high is better than no truce.[36]

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[35] Lucie White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power,* 1988 WIS. L. REV. 699.

[36] These barriers operate together to deflect, submerge, or conceal the wants or preferences of subordinated groups. In most cases, group members are discouraged from raising their voices at all, or the polity has no language for comprehending or responding to claims . . . . [They suffer from] the *suppression* of conflict, rather than overt political defeat.

Id. at 750-51 (emphasis in original).

P: Is it? What's changed about the power system to allow you and other students greater involvement to prevent yet another episode of multicultural hostility? How have the students' problem-solving capabilities been expanded and strengthened to better anticipate and prepare for the next dispute?[37]

1L: I guess the students at large are kept at bay.

P: So you remain in the same position as you were in before?

1L: I suppose.

P: That's exactly the point. You are not gaining any ground in your ability to be heard. Your dispute-handling skills remain unaccounted for. Institutional problem-solvers, whether here at the law school, out on the street, or inside a courtroom, tighten their control over procedures and remedies even as they appear to be sensitive to satisfying the disputants.[38]

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[37] I have written elsewhere on the crucial, yet often squandered, educational value of students' multicultural life stories. David Dominguez, *Beyond Zero-Sum Games: Multiculturalism as Enriched Law Training for* All *Students*, 44 J. LEGAL. EDUC. 175 (1994).

[38] Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533 (1992) (examining relative difficulties of poor clients and landlords in achieving ends); Peter Gabel and Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, 11 N.Y.U. REV. L. & SOC. CHANGE 369, 372-375 (1982-83) (legitimizing subordination).

1L: So what can we first-year law students do differently to gain ground, to engage ourselves fully in the law school's problem-solving processes?

P: Transform power relationships.

1L: How?

P: Let's begin with your participation in the design of the public interest law course syllabus. How would you like to help me structure the class assignments, reading list, and so on?

1L: Gee, Prof, that's a radical invitation!

P: Bear with me. Assume that I asked you to select and read any of the provocative articles listed in the footnotes accompanying this dialogue.[39] Further assume that you would then meet with four or five of your classmates who had done the same thing. Finally, assume that your task would be to agree as a team on one of your articles being assigned to the class as a whole.

1L: Now that would make for a very interesting discussion. We would reveal the importance we place on different issues. That would be hard enough. But then we would have to distill our thoughts and arrive at a consensus. That would require us to understand and synthesize the larger priorities of the group as a whole.

P: Right. And then, when we discussed your team choices as an entire class, it would give us all a sense of our respective starting points. Wouldn't you like to know where your classmates were

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[39] Yes, I realize this is a bit surreal.

coming from at the beginning of the semester and the impact it had on the course syllabus?

ACT II, SCENE II: (Where the professor answers the question from the audience, "Is all this really going to make the public interest law course more meaningful to students?")

This experiment in positive recognition of student talent and in self-help participation provides relief from dictatorial teaching methods of the first-year curriculum. But far more importantly, these classroom dynamics impress upon students the central teaching of the course: public interest law practice not only seeks legal decisions for the common good (e.g., enforcement of civil rights), but greater involvement by the public at large in solving problems within their communities.[40] It not only challenges discrete acts of the powerful ("How do we get the landlord to remove the drug dealer from the apartment building?"),[41] but tries to teach the complaining public how to recognize and proactively employ self-help skills and resources to make power more just and equitable ("What more can we do to have a say in the selection of new tenants? How might we organize ourselves to have credible, accountable input in the application and

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[40] Many writers address this subject as though the principal audience is the poor. *See, e.g.*, Erlanger & Lessard, *supra* note 4, at 199. More than addressing the needs of the poor, public interest law seeks to improve everyone's problem-solving capabilities and options. The poor, the middle-class and all other sectors will gain from reformed power relationships.

[41] The question arises whether the tenants all seek the same relief: Removal of the drug dealer and nothing more? Monetary compensation? Other assurances or affirmative relief? If they do not, the lawyer has ethical responsibilities running to each tenant, a situation which could create conflicts. Ellmann, *supra* note 11, at 1114-17.

screening process?").[42] In short, public interest law handles disputes with an eye toward improving problem-solving options within power relationships.[43]

During the 1993-1994 Winter semester, I had law students learn and practice this central teaching on three levels. On the most immediate level, between myself and them, they reformed our power relationship from a private conflict ("How do I get the best grade in this class?") to a public protest against those structural barriers which deny them equitable self-help participation in law school decision-making processes[44] ("Why does the law professor alone get to choose the material that will be studied, tested and graded? For that matter,

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[42] In Erlanger & Lessard, *supra* note 4, at 213, the authors report on law school programs which stress the "transformative" practice of law. At the District of Columbia School of Law, for example, a clinical program uses a "proactive approach premised on the belief that clients are most effectively served by affirmative advocacy which addresses the underlying factors that create the problems."

[43] Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990); Lucie E. White, *Seeking ". . .The Faces of Otherness. . .": A Response to Professors Sarat, Felstiner, and Cahn*, 77 CORNELL L. REV. 1499, 1505-06 (1992).

[44] The complaining students can participate as individuals, each telling a private story based on actual facts, or can structure themselves into an organization authorizing certain decision-making processes, including construction of a blended, public story for maximum effect. Without guidance, it may be difficult for them to erect a decision-making agency through which to deliberate and act. Once they are an organization, is it permissible for the 1L leader (acting as a lawyer) -- especially in collaboration with one faculty member if not the faculty as a whole -- to override the express wishes to advance the overall goal of the group? *See* John Leubsdorf, *Pluralizing the Client-Lawyer Relationship*, 77 CORNELL L. REV. 825, 826-31 (1992).

why are we tested and graded?").[45] The point was not to encourage law students to overthrow the institutional status quo for the sake of beginning anew, but to learn the necessary skills, both as individuals and as members of a group, to constructively criticize the benefits and drawbacks of established power systems -- in this case, the custom of law professors unilaterally deciding for them what is best for their legal education.

The second level of power relationships to be reformed was among the students themselves as they forged problem-solving partnerships.[46] Grouped into self-selected teams of four or five, they identified a community law problem and worked together to construct a field map tailored to their abilities and vision.[47] This field map, arrived at by consensus, required them to divide up assignments to research the relevant law, interview local leaders, formulate proposals, agree on and enforce deadlines, and help local leaders implement the final proposal. Prodding each other to fulfill their respective commitments prepared students for one of the toughest

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[45] As distinct individuals, the meaning of these questions may be different for different students. What is it that each one wants? Expects? Would be satisfied in securing? For themselves only, or to be applied prospectively as a new policy?

[46] They could learn how to come to agreement on low-cost conflict resolution mechanisms to settle disagreements without undue stifling of storytelling. By learning and practicing these methods on the micro scale of student-professor and then again inside a small team of students, they would be ready to offer their experiences -- their group story -- to a community group. Ellmann, *supra* note 11, at 1139-1146.

[47] Lucie White, *Paradox, Piece-Work, and Patience,* 43 HAST. L.J. 853, 855 (1992), commenting on Anthony Alfieri's "theoretics of practice," notes that, "Rather than a task reserved to scholars, theory becomes a habit of ongoing conversational reflection about how to describe the problems, make alliances, devise strategies, and thus move together toward a better world."

parts of the public interest law practice -- invigorating and sustaining an ensemble project among legal counsel, community agencies, clients and other interested parties.[48]

1L: Hey, sorry to cut in, but I have something to say about all this. May I be heard?

P: Sure, go ahead.

1L: Don't you remember that I came in here complaining about having no time for public interest law?[49] How can one very busy law student or, looking ahead, a harried lawyer, possibly make such commitments of time and other resources?[50]

P: You raise a good point. No matter how bright and capable we are, we can't work on public interest matters without widespread support.[51] We all benefit from what I call ensemble lawyering,

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[48] Leubsdorf, *supra* note 44, at 825: "In reality, legal services today are usually rendered by groups of people for other groups of people or perhaps by organizations for other organizations." Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L.J. 1060, 1088 (1976) (disrespect between persons is a form of immorality, denying that person as valuable, valuing agent).

[49] I stress to students that career burn-out is avoided by taking full advantage of friendly colleagues and knowledgeable associates. Consequently, they must learn in law school how to build and maintain strong networks of helpful resources. If not, they join the legion of lawyers who are dissatisfied with their work primarily because they don't know how to ask for help and thus spend too much time "reinventing the wheel."

[50] Lopez, *supra* note 5, at 335.

[51] *Id.* at 356.

bringing together attorneys and community representatives to examine larger legal and political patterns which deprive innumerable indigent communities of justice.[52] But this brings us to the third and most difficult level of reforming power relationships.

1L: Which is?

P: The problem-solving relationship between lawyers and community representatives of service agencies, worker organizations, political interest groups, extended families, sports clubs, religious bodies or any other association. Public interest law teaches you the necessary skills to develop a strategic partnership in order to improve the life of not only an individual disputant but of all those similarly situated.

1L: This isn't happening already?

P: To a certain degree, yes. In fact, these relationships are present in class action lawsuits and other high impact litigation.

1L: You've lost me. High impact litigation?

P: Test cases which allow many disadvantaged clients to achieve access to legal services all at once.[53] These cases, often in the form

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[52] *See* Leubsdorf, *supra* note 44, at 826-31.

[53] GERALD P. LOPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE, 14 (1992) (Catherine performs law clerk duties for Teresa and learns that instead of taking every client with a valid claim, Teresa seeks out litigants "to fit sensitive social issues.").

of class action lawsuits, try to stop the flow of claims at the source.[54]

IL: Is *Brown v. Board of Education* an example?

P: Yes it is. But these cases can also be far less dramatic. Consider a state probationary employee discharged for alleged theft. The labor union contract excludes probationary employees from the institutional grievance handling process. The governing law is of no help: the state may dismiss a probationary employee for any reason except those explicitly prohibited by statute. The fired employee is clearly in a subordinate position. Employment attorneys file a test-case arguing that even though there is no explicit statutory provision to invoke, the state violated the Fourteenth Amendment's protection of liberty interests by failing to afford the probationary employee a pre-termination hearing. The court agrees that the accusation of theft injures the employee's good name and thus impairs prospective employment opportunities -- i.e., the probationary employee's liberty interest. With one test case, all state probationary employees are granted new procedural safeguards from summary discharge.[55]

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[54] During the 1960s and 1970s, lawyers and legal academics emphasized asserting legal rights through litigation. Activists, such as the National Association for the Advancement of Colored People (NAACP) and the NAACP Legal Defense and Educational Fund, set a pattern for activist lawyering. Beginning in the 1960s, a collective model of legal rights activism replaced the traditional legal aid model of individual service for poor clients.

[55] *See* Gary Bellow and Jeanne Kettleson, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Law Practice*, 58 B.U. L. REV. 337 (1978). The authors argue for the "distinctive characteristics" of law practice on behalf of the "legally disadvantaged." Reports from the practicing bar, however, maintain that the role of the poverty lawyer is no different from other legal professionals. *See also* Project Advisory Group, FUTURE CHALLENGES: A PLANNING DOCUMENT FOR LEGAL SERVICES 2 (Legal Services Corporation 1988); STANDARDS FOR PROVIDERS OF CIVIL LEGAL SERVICES TO THE POOR

1L: You said that these cases transformed power relationships only "to a certain degree." What did you mean by that?

P: As important as these forms of litigation are, they still represent problem-solving on our professional terms as attorneys. Although we may work alongside community representatives, we force them to accept legal descriptions of the problems and judicial procedures and remedies.[56]

1L: This reminds me of our earlier discussion on the importance of who is framing the issue and whose voices are missing.[57]

P: Exactly. By virtue of our law school training, we describe conflict as though it were a military exercise: the enemy has powerful legal weapons at its disposal to wage judicial battles. Your combat mission is to limit your client's exposure by building your case and tearing down your adversary's. When problems of underprivileged communities are understood as military maneuvers, the needy often lose the war even when they win skirmishes.

(American Bar Association 1986).

[56] *See* White, *supra* note 15, at 861: "The advocate. . .reiterates the client's predicament within the helping relationship itself. Because advocacy is a practice of speaking for -- of presuming and thereby prescribing the silence of the other -- the advocate, no matter how 'rebellious' she aspires to be, inevitably replays the drama of subordination in her own work." (footnote omitted).

[57] *See* Tremblay, *supra* note 23, at 947 (pointing out inherent tension between being "client-centered" and the entire notion of test cases: "[I]ncreased client-centeredness will lead to more, rather than less, conventional lawyering."); *but see* DAVID LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY 295, 306-10 (1988) (arguments supporting high impact litigation).

IL: How so?

P: Even the most noble, forward-thinking public interest lawyer imposes a legal framework on what is essentially a political process.[58] We beguile the powerless into trusting in a legal system designed for the problems of the powerful, for a class of people having no fundamental desire to alter the prevailing structures or social arrangements of power but who, having assumed the legitimacy of the reigning forms, want to dispose of a tiff between their class members.[59]

IL: The way you make it sound, law cannot be practiced in the public interest.[60] Legal services, at best, camouflage the real problem and, at worst, seduce the poor into reinforcing their subordination.[61] My gosh, thinking like that makes "public interest law" an oxymoron!

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[58] White, *supra* note 15, at 872 (many mainstream social theorists consider the disparity of wealth distribution a threat to democratic regimes).

[59] *See* Anthony V. Alfieri, *Impoverished Practices,* 81 GEO. L. J. 2567, 2592 (1993), where the author criticizes the "modernist poverty lawyer" construction that law "both defines and defends these rulers' claims upon resources and labor-power." (quoting from E.P. THOMPSON, WHIGS AND HUNTERS). *See also* Bezdek, *supra* note 38, at 597-600.

[60] White, *supra* note 35, at 724. n. 108: "Professionals, by virtue of their exalted status and claimed expertise, actually disable the clients that they seek to help."

[61] Shalleck, *supra* note 30. *See also*, Tremblay, *supra* note 23, at n.31:

> [R]egnant lawyering may be perversely dangerous precisely because it is benign and well-intentioned. Its impact upon dependent clients is harder to resist because the subordination happens in a supportive and caring context, and the perpetrator of the subordination is one who the client views as a helper or a champion.

P: Agreed, I have overstated the point. But can you see how it can be counterproductive for low income communities to have their group claims pursued as private legal rights through highly technical, court-driven formats?

IL: You're saying that low income communities should be wary of the public interest lawyer as a potential wolf in sheep's clothing.[62]

P: No, not necessarily. If the public interest lawsuit is used as part and parcel of a political strategy to educate and mobilize a silent, disjointed community, it can provide a long-term payoff.[63] The community can learn from the lawsuit that unless they themselves do the necessary work to address the problem in its fullest context, relief will be limited to the preferred dispute resolution format of the status-quo.[64]

IL: Sort of a spin-off of the adage, "Don't just hand hungry people

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[62] Lopez, *supra* note 53. Raised in Southcentral Los Angeles during President Johnson's War on Poverty, I, myself, relate well to this point.

[63] Professors Peter Gabel and Paul Harris teach a course called "The Politics of Law Practice" which teaches students "to integrate their representation of individual clients into broadly based social change strategies, and to recognize the implications of their daily efforts as components of the larger project." Erlanger & Lessard, *supra* note 4, at 214.

[64] White, *supra* note 15, at 869-71. Tremblay, *supra* note 23, at 967, explains that poorer clients may not want to participate in preventative lawyering, i.e., politically negotiated options which avoid litigation, if they perceive potential risks: "[W]e cannot expect clients, if offered a free and informed choice, willingly to sacrifice their present benefits [e.g., individualized legal services] for future benefits unless the promised benefits are substantially assured and will accrue to those clients themselves."

a fish, teach them how to work the streams for themselves."[65]

P: You got it. As with medicine, law study can either be reactive, responding to the pain with authoritative pronouncements from the law professor on causes and remedial measures, or preventative, focusing on the client's responsibility for wellness. Classic legal pedagogy begins the classroom inquiry at the advanced stages of the malady and argues over which injuries have occurred, decides who bears liability, and fashions an appropriate remedy.[66]

IL: And how is the public interest law course different?

P: It challenges us to ask what we can do ahead of time to discover and activate self-help tools to prevent the setback in the first place. It concerns itself with the present and potential value of community resources for understanding and processing conflict, including extended families, worker organizations, religious groups, sports clubs and any other network which can prevent formal litigation and the need for attorneys.

IL: Helping everyday people reclaim everyday justice. . .[67]

P: Very good!

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[65] Erlanger and Lessard, *supra* note 4, at 214.

[66] Tremblay, *supra* note 23.

[67] Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1055 (1970): "The law ought to be demystified for all laymen, but especially for the poor." *See also*, Gerald Lopez, *The Work We Know So Little About*, 42 STAN. L.REV. 1, 10 (1989).

1L: But doesn't that require public interest lawyers to be familiar with the methods and skills of a grassroots organizer?[68]

P: Ideally, yes. Equipped with such skills, public interest lawyers join forces with community leaders in a spirit of self-help partnership. They learn to render legal services in those ways which advance the authentic agenda of the outsider group.[69] In so doing, they avoid the typical attorney-client relationship, which typecasts the lawyer as the authority, and instead tap into the full resolution capabilities of the people themselves. Ensemble lawyering is built on mutual respect -- a rare experience indeed between low-income working people and professionals.

1L: But how can this happen in a classroom?

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[68] Bill Ong Hing, *supra* note 28 at 1808:

> Good community oriented lawyers, I believe, are humble, not paternalistic, identify and work with other allies in the community, respect the client's own talents and skills, work in partnership with the client, respect the client's informed judgment on case strategies, strive to demystify the law and procedure for clients, engage in substantial amounts of community education, consider an array of alternative approaches to legal problems, and get to know the community, much like a community anthropologist.

[69] Cunningham, *supra* note 34. In reviewing MILNER S. BALL, THE WORD AND THE LAW (1993), Cunningham relates the story of New York Judge Margaret Taylor's experience with inner city youth. Judge Taylor was a legal aid lawyer with Mobilization for Youth. With a team of doctors, educators, social workers, and job specialists she attempted to reach the goal of having all of the children in the community reach the age of twenty-one. Quoting Ball: "The wholeness of response offered by that program in that setting is a guiding image for what Judge Taylor provides through her present [judicial] office." *Id.* at 35.

P: It can't. You and your classmates, in small teams of four or five, will investigate problems in the local community and choose, again as a negotiation exercise among yourselves, which problem your team will address during the semester. Your group will formulate a research agenda to thoroughly study the legal history of the issue; arrange meetings with key community leaders, business and government officials; be accountable to team deadlines; work closely with community representatives toward formulation and implementation of a field plan; and, finally, report to the class as a whole its evaluation of whether the team made a positive difference.[70]

IL: Talk about being stretched out of our comfort zone!

P: All your interactive abilities will be sorely tested. To speak and listen effectively in this collaborative dialogue with community members, you will have to slow yourselves down and resist the snap judgment.[71] You will have to learn how to interview, mediate, and negotiate.[72] Most of all, the public interest dialogue will take you beyond "researching the right legal answer" to developing better questions: Is a power relationship or institutional practice at risk in

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[70] What I found truly satisfying was to have the teams post their final reports in the law school lobby. Supplementing these reports were items used by the teams to complete their projects: announcements, flyers, pamphlets, props -- even a few letters of commendation.

[71] *See* DAVID A. BINDER, PAUL BEGMAN, AND SUSAN C. PRICE, LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH (1991) (arguing the importance of listening skills which hear the client's real story and which encourage the client's full participation in the handling of the case).

[72] ROBERT M. BASTRESS AND JOSEPH D. HARBAUGH, INTERVIEWING, COUNSELING AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION (1990) (attorneys should strive for partnership and openness).

resolving the dispute at hand? Should the outcome be evaluated only in the short-term? Is a larger coalition necessary given the size of the problem? When is it time to solicit a second and third opinion on strategy, feasibility and cost?

1L: So what you are saying is that the public interest law course teaches not a subset of legal doctrine but rather a whole new role for the law and lawyer in the lives of outsider communities?

P: Yes. A public interest, by definition, is one in which we all share a stake in the outcome. It is a value or principle that adds to the quality of our life in common. Unlike the winner-take-all structure of a private rights lawsuit, public interest law tries to make us all winners. One way it does so is by building a democratic political process which encourages maximum participation from all segments of the public.

1L: But we all can't end up winners, can we? I mean, someone has to give up some of what they now have so that someone else can get a little more, right?

P: You're describing what is commonly referred to as the "zero sum game."[73] The underlying assumption is that all parties' interests

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[73] More precisely, zero-sum games are zero-sum contests or zero-sum negotiation. The former looks to a neutral third party to decide one winner and one or more losers. The latter looks to the competitors themselves to decide which of them will come out ahead. Both are discussed in the literature on distributive bargaining. *E.g.*, HOWARD RAIFFA, THE ART AND SCIENCE OF NEGOTIATION (1982) at 34:

> [There are two or more negotiators each] engaged in a one-time bargaining situation with no anticipated repetitions with each other; they come to the bargaining table with no former 'favors' they have to repay, and this bargain is not linked with others that they are worrying about; there is a single issue

and values have been accounted for and the only question is how to best distribute the fixed resources in light of those concerns.[74]

IL: Isn't that the case? Isn't the goal of public interest law to help the "have-nots" wrest away a bigger share of goodies from the "haves"?

P: No, it is not. Admittedly, in our haste to dispose of legal problems, we often resort to zero-sum games in private rights cases and simply "split the difference" in our competing legal demands.[75] But we cannot afford this approach in public interest law. Instead, problem solving methods in the public interest need to tap into new sources of joint-gain and long-term payoff. We must learn to expand the pie by integrating more contributions from the disadvantaged communities in order to build a stable, productive dialogue and avoid

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(money) under contention . . . .

[74] [M]any parties do not automatically know what opportunities for cooperative action there are to exploit. The parties must explore -- imperfectly -- the arrangements they may jointly be able to create. In practice many gains go unrealized. Inferior agreements are made. Impasse results and conflict escalates when cooperative action might have been better for all. Understanding where private and common value really come from should make jointly creating it more likely.

DAVID A. LAX AND JAMES K. SEBENIUS, THE MANAGER AS NEGOTIATOR: BARGAINING FOR COOPERATION AND COMPETITIVE GAIN at 90 (1986).

[75] *See* GERALD R. WILLIAMS, LEGAL NEGOTIATION AND SETTLEMENT (1983) (arguing that principled lawyers eschew the splitting-the-difference method and instead look to maximize gain for each side.)

protracted litigation.[76]

1L: I'm not sure I'm following you.

P: Let me give you some concrete examples. Let's begin with the public interest law class itself. When I, as the professor, use this dialogue to tap into law students' ideas and abilities, I add to the syllabus and course material through self-help participation from a disadvantaged community. When I arrange for you to form into teams to practice ensemble lawyering skills, you increase each other's resources without cost to any of you.

1L: Okay, I see how self-help participation produces joint-gain within the law school walls. Now, show me how it works in the lives of the middle class and low income communities.

P: When crime-ridden neighborhoods organize local justice centers to apply more pressure on themselves as well as on the police to achieve smoother relations and greater crime-control, everyone gains. When local renters form tenant organizations and meet monthly with landlord associations to air out complaints, fewer lawsuits are filed and everyone gains. When a network of concerned parents institutes a telephone hotline to gauge neighborhood fears over a particular safety hazard and then consults with city officials before taking legal action, everyone gains.

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[76] WILLIAM URY, JEANNE BRETT AND STEPHEN GOLDBERG note in GETTING DISPUTES RESOLVED: DESIGNING SYSTEMS TO CUT THE COST OF CONFLICT at xvi, (1988): "[Resolving a dispute is not] just a question of having the right answer and then convincing the parties. Often the participants have useful ideas about what is wrong and what is needed, what will and will not work in their situation. The designer's knowledge must be blended with theirs."

1L: In other words, in gaining a greater political opportunity to process disputes, outsider communities shoulder greater responsibility for contributing their talents and supporting durable solutions.

P: Yes, which takes us to the boldest vision of public interest lawyering: it turns disputants away from the legal system altogether and redirects their effort to negotiated political processes.

1L: Wow! To realize that vision, don't we need to supplement our law training? What tools in particular will enable us to build this third level problem-solving partnership?

P: The ability to aggregate, network and teach.[77] Aggregation means pulling together similar complaints to get a more accurate read on the severity of the problem.[78] Is the concern widespread or is it limited to certain people in certain situations? Networking reveals who is interested and what resources they bring to bear.[79] Teaching in this sense means organizing and conveying the message in order to broaden the campaign, thereby completing the cycle and producing a stronger aggregation.[80]

1L: Are these the only community development skills a public interest lawyer needs?

P: Hardly, but they will get you started and guide you.

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[77] Lopez, *supra* note 5, at 381-382.

[78] Ury, et al., *supra* note 76, at 20-40.

[79] *Id.* at 61, 69-74 ("notification and consultation" systems).

[80] *Id.* at 65-83.

1L: So, as we aggregate, network, and teach, what might some of the team field projects look like?

P: Let's take three possibilities. First, a team might arrange an aggregation system through which all residents notify a central clearinghouse of recurrent problems -- e.g., a hotline to report the discriminatory acts of a merchant. As for a network, the team might work with community leaders, business officials and government representatives to develop a problem-solving dialogue among them -- say, a series of meetings to modify existing bus routes. Third, with regard to the teaching role, a team might present a community law school seminar. For example, the team would arrange Saturday workshops at the local library or church to teach parents of gang youth how to work effectively with the police department.

ACT III: (The students actually take to the field.)

Little did I know that when I released them into the community, the law students would pursue their public interest fieldwork with such enthusiasm, creativity and dedication. To complete the assignment, they needed to demonstrate how their team's legal research translated into effective aggregation, networking or teaching.[81] Although responsible for satisfying only one of the three skills, many teams put all three into practice as they accomplished the following: (1) Organized and conducted a workshop on immigration issues for the local Latino community, bringing together Spanish-speaking attorneys, clergymen and a key service organization; (2) Produced videos, pamphlets and talks on the inadequate protection of battered women; (3) Strengthened constituency services for both United States senators by networking

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[81] *See* Wexler, *supra* note 67, at 1056-58.

local organizations; (4) Went to local nursing homes and conducted workshops on the living will, special power of attorney, guardianship, organ donation, and other medical treatment directives; (5) Arranged for the local expert on gang activity to address law students, explaining the extent of the problem and the broader role law students can play; (6) Taught law school seminars in high schools, including the school for unwed mothers; (7) Organized the disabled community to better respond to housing issues under the Americans with Disabilities Act; (8) Made law library resources more user friendly for international students; (9) Taught dispute resolution skills to elementary school children; (10) Investigated the discrepancy in the appointment of public defenders and produced a report for the local court; (11) Drafted a new form to improve the flow of communication within the state's guardian ad litem office; (12) Produced a video for police officers to master essential phrases in Spanish; (13) Coordinated related services of various agencies which serve the Latino community of the Salt Lake Valley; and (14) Drafted a new form for local tenants to negotiate a release from a lease.

Law students known in the local community for redirecting disputants into their associational ties to better engage in political negotiation? Recognized for helping everyday people reclaim everyday justice?

Don't get me wrong. I see the field of "*pro bono publico* legal services" including the ongoing efforts of the poverty lawyer operating from a storefront office as well as those of a good-hearted practitioner taking time out from corporate firm practice to volunteer legal representation for someone unable to afford an attorney.[82] But these images are unduly restrictive, at times providing little more than one-time access to legal services. Sure, isolated problems of the less

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[82] MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.1 (1993).

fortunate are disposed of and those lucky enough to gain access to free legal services are benefitted. But one-time access disempowers society at large because this version of public interest law depends on the mind-set of attorneys and the "eligible" financial status of potential clients.

As aforementioned, the mission of public interest law is to improve legal problem-solving options for the common good -- i.e., to make not only professional legal services more accessible but to make justice and equity more meaningful within power relationships. While its minimum goal is to encourage lawyers to volunteer representation to those unable to pay and to "prevail", its ultimate vision is to strengthen local networks, agencies and centers, however formally or informally arranged, to process the dispute at hand so that the community is better prepared for those on the horizon.[83]

Indeed, public interest law derives its urgency not simply from impoverished clients but from the impoverished repertoire of professional problem-solving. Society is increasingly dissatisfied with win-lose judicial descriptions, proceedings and remedies. The public interest is better served by encouraging self-help participation in problem-solving and by transforming institutional practices so that disputes can be handled on terms that everyday people understand.[84]

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[83] Ellmann, *supra* note 11, at 1122-23. "The assertion that people can protect their individual wishes through group membership is hardly a revelation; a central lesson of modern life is that it is very difficult for people to protect themselves against others' encroachment except through group involvement that overcomes barriers to effective individual action." *See also* Paul R. Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 U.C.L.A. L. REV. 1101 (1990); *cf.* Marshall J. Breger, *Legal Aid for the Poor: A Conceptual Analysis*, 60 N.C. L. REV. 282 (1982) ("a person cannot be rejected as a client because of the comparative social utility of his case.").

[84] White, *supra* note 15, at 887:

> Rather than seeking any more remedies for the poor, we might hesitate for a moment before filing another lawsuit, even if we

POSTSCRIPT:[85] (Where the law student dares to extend the self-help message way beyond the professor's calculation.)

IL: Oh, Prof, just one more thing before I go. . .[86]

P: Yes?

IL: I was curious about the grading system in this class?

P: What about it?

IL: Will we be numerically scored as in our other courses?[87]

P: Yes.

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think we know exactly how to frame a winning claim. Instead, we might look around us for spaces where poor people can talk among themselves about what they want to do.

[85] The dialogue that follows is provided in the interest of completing the record. There was no mention of grading in the original dialogue. Once this became a hot controversy and a great object lesson for the application of course material, I asked them to address the matter in a short reflective paper. I only wish that I had circulated another copy of the complete dialogue, including the postscript, at the close of the semester to see how much their views had evolved on all topics.

[86] The ever-dangerous "just one more thing." As you can see from the pages that remain, this was not "just one more thing."

[87] Can you imagine that? After all that harping on framing an issue in the public interest in order to account for the missing voices, I failed to explore if the "we" was a reflection of widespread concern.

1L: Along the same rigid median?

P: Right.

1L: You mean that there will be only so many top grades awarded and at least half of us will be given the average number or below no matter how well we do?

P: I'm afraid so.

1L: After all that you have said, do you think that that grading arrangement is in the public interest?

P: Hmmm. . .

1L: How are we to practice ensemble lawyering in good faith if we are competing against each other for top grades? How will we be able to sustain esprit de corps within the small teams if you will be evaluating us individually?

P: Well, you make a strong case for reconsidering the grading system, but the law school has spoken and it is not for me to question why.

1L: Whatever happened to transforming power relationships in the public interest?

P: Ouch. You got me there. But how do you know that your classmates are of one mind on this matter?

1L: Does that glint in your eyes, Prof, mean what I think it means?

P: Well, I have to confess, this makes for a great object lesson.

Your desire to have the grading system changed puts the public interest course materials to the test. Now, then, how will you begin?

1L: By paying close attention to how the issue is framed.

P: And. . .

1L: By observing carefully who is being heard from and whose voices are missing.

P: Good enough. So how are you characterizing this problem?

1L: As either the traditional grading system or pass-fail.[88]

P: And who, as far as you can tell, is not being heard from?

1L: My classmates.

P: So your first effort will be?

1L: To aggregate the sentiments of the affected public.

P: Go for it.

I wish that I would have had the presence of mind right then and there to explain why the framing of the problem was deficient and why the first-year class was not the only affected public. Given all we had discussed, how could the best framing be "either/or" --

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[88] Here again, I failed to promote open exchanges in the public interest. Framing the matter as "either/or" meant the affected public would have to take sides and defend their position as in a private rights lawsuit.

either numerical grading or pass-fail?[89] Wasn't the real issue whether there might not be an alternative grading system that would better serve the concerns of all interested parties?[90] With that thought in mind, shouldn't the law faculty as a whole have spoken to the multitude of alternative approaches we had used over our combined years of teaching?

The biggest public interest law mistake of all: pit the first-year class against the law faculty, claiming that the latter's tenacious grip on its power to grade makes it deaf to the cry of students. Keep "them" outside the loop just as they always deny "us" equitable participation.

1L: But isn't that what you taught me to do? Weren't you the one, Prof, who encouraged me to question and challenge the power system?

P: Yes, but to do so in the public interest.

1L: Isn't that what I did?

P: No, you circulated petitions among your classmates that asked them to sign their names in support of a pass-fail system. That served just the opposite end for which it was intended -- it suppressed the voice of classmates and placed the law faculty on the defensive.

1L: But how?

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[89] ROGER FISHER AND WILLIAM URY, *FOCUS ON INTERESTS, NOT POSITIONS*, IN, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN, 41-57 (Bruce Patton ed., 1981).

[90] Howard Lesnick, *The Wellspring of Legal Responses to Inequality: A Perspective on Perspectives*, 1991 DUKE L.J. 413, 438.

P: You[91] wrote across the top of the petition your reasons for converting public interest law to a pass-fail grading system. You emphasized that the faculty did not understand your professional needs. Hence, your fellow students, in order to sign the petition, had to agree to support one particular outcome, pass-fail, and for reasons which antagonized their mentors and friends. Don't you remember saying to me that you thought it was unfair of the faculty to impose the course without consulting with you? That it communicated a lack of respect?

IL: Yes.

P: Well, the framing of the problem in the petition alienated your classmates and teachers.[92]

IL: The petition was just my way of trying to save my classmates the time and energy to produce their own statements.[93] And I didn't think the law faculty would take it personally.

P: Instead, it appeared as a power play, as though you were trying to usurp the authority to speak for classmates in opposition to the law faculty.

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[91] Borrowing from the class format, a small team of first-year students led the way.

[92] Homer C. La Rue, *Developing an Identity of Responsible Lawyering Through Experiential Learning*, 43 HASTINGS L.J. 1147, 1151 (1991) ("lawyer's account [of the problem] can leave the client silenced in ways that subordinate the client even further.").

[93] *See* White, *Seeking ". . .The Faces of Otherness. . .," supra* note 43, at 1506-07 (". . .to name other's feelings is also to silence their voice.").

1L: So a better aggregation method would have been to arrange for an open forum and invite all segments of the law school community to discuss the issue?

P: Yes, a town hall discussion permitting all sides to be heard and to brainstorm ideas would have spared you the criticism you have been receiving.

1L: I can't believe I am being accused of manipulating and deceiving people in order to get the petitions signed!

P: You are learning a very valuable lesson about public interest problem-solving the hard way: whoever is taking the lead to advocate for structural reform must use organizing methods which honestly aggregate the complaints of affected parties. Rather than force the gripes of others into your prearranged boxes, you have to hear them out on their own terms. Secondly, the networking procedure must avoid the sense of a fixed, pre-arranged agenda. Coalition members deserve an opportunity to reshape the discourse based on the available resources.[94]

1L: Everyday people reclaiming their participation in everyday justice.

P: Exactly. Only in that way can the gravity and prevalence of a problem be accurately assessed and handled. In this case, you would have discovered that many students are concerned that if the numerical grade is removed, students will not be motivated to do their

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[94] Lesnick, *supra* note 90, at 438 (aggregation and networking are not simply an effort to increase the volume of claims but they enable diverse clients to see what interests they share, who else might be affected, and how together they might learn "to seek solutions as part of a community.").

best but will work just enough to pass. Had the faculty been consulted you would have tapped into the strongly held belief that the course is devalued if it is scored in any way other than numerically. According to this view, abiding by the fixed median score and all other terms of numerical scoring means that, in the best judgment of the law school, the course is every bit as valuable as the other first-year courses.

1L: I feel like I failed.

P: How so?

1L: We are still being graded numerically.

P: Wait a minute. Your agitation has been educational. You have heightened awareness and caused everyone to think through the issues.

1L: But, using your earlier words, I haven't gained any ground.

P: Not true. First of all, you did me and your classmates a favor by provoking us to carefully review and practice course materials. Secondly, you caused everyone to ask what purposes are served by grading law students as we do.[95] Thirdly, you prompted a law faculty committee to arrange a mediation session so that concerns could be aired and considered by a greater number of participants. This was an unprecedented procedure and signalled the willingness of the law faculty to more regularly evaluate with students the purpose and

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[95] In fact, although it is impossible to tell what impact the petition and follow-up discussion had on a movement already underway, BYU Law School has converted to what amounts to a letter grading system as of Fall 1994.

direction of legal education.[96]

1L: . . .that much ground, huh?

P: More. By motivating me to record this dialogue, you now challenge the reader to more actively participate in the student-professor-practitioner exchange on reconstructing legal education and community problem-solving.[97]

1L: Do you think there is that much value in the telling of this story?

P: Oh, yes, both present and future. Looking ahead, I can't wait to see how you'll share this tale with next year's entering class and the

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[96] The student comment/question that still rings in my ears is: "In the public interest course, we learned by doing. Since the clinical component was so helpful in mastering the theoretical material, wouldn't a hands-on, in-role workshop be of benefit in some, if not many, of my other law school courses?" *See* Anthony G. Amsterdam, *Clinical Legal Education--A 21st Century Perspective*, 34 J. LEGAL EDUC. 612 (1984) (discussing the trade-offs of experiential learning within traditional legal education).

[97] *See, e.g.*, AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT--AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP ("THE MACCRATE REPORT") (1992). The MacCrate Report:

> provides us with the opportunity to take a fresh look at legal education as a process which begins well before law school and lasts a lifetime after law school. . . . [It] reminds [us] that legal education has developed into a large and prosperous enterprise which produces lawyers in record numbers, but pays too little attention to its history, its purpose or its role in society.

Keynote Address of Talbot "Sandy" D'Alemberte, CONFERENCE PROCEEDINGS, THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM, at 4-5 (1994).

new chapter it will add.

1L: Yeah! My classmates and I will be around to help guide the aggregation of their voices and the networking of their strategies and goals with the law faculty.

P: What about teaching others, the third skill you've learned?

1L: Given what we have been through this past semester, mistakes and all, who better to identify with their protest and to teach them how to *improve* this dialogue?

P: You're ready. Do it!